

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

FOODTOWN, INC., et al.,
Plaintiff,

v.

NATIONAL UNION FIRE INSURANCE
COMPANY OF PITTSBURGH, PA,
Defendant.

Civ. Action No. 05-3627 (KSH)

ORDER

Katharine S. Hayden, U.S.D.J.

The Court having filed an opinion herewith, and for the reasons set forth in that opinion,

IT IS on this 20th day of August, 2008,

ORDERED that the parties' cross-motions for summary judgment (D.E. 24 and 27) are hereby reinstated; and it is further

ORDERED that plaintiff's request for declaratory relief is **granted** as to Counts Two and Four of the Food King complaint¹ and **denied** as to Counts One and Three of the Food King complaint; and it is further

ORDERED that plaintiff's counsel is directed to submit an attorneys' statement of services detailing the fees and costs incurred prosecuting this action and a proposed order within 10 days of the entry of this Order; and it is further

ORDERED that the parties are directed to execute the Court's rulings with respect to apportionment and indemnification of the defense costs in the Food King action; and it is further

¹ Plaintiff Foodtown filed this action seeking a declaratory judgment, along with other relief, that defendant National Union is obligated to pay the costs to defend or assume the defense of Foodtown in an action captioned "Food King, Inc. v. Norkus Enterprises, Inc., et al." brought by Food King, Inc., a shareholder of Foodtown, in the District Court of New Jersey ("the underlying action"). Food King filed the underlying action on March 29, 2004 in the Trenton vicinage, where it was assigned Civil Action No. 04-1500 (MLC) and is still pending before the Honorable Mary L. Cooper.

ORDERED that the Clerk of the Court is directed to close this matter.

Dated: 8/20/08

/s/Katharine S. Hayden

Katharine S. Hayden, U.S.D.J.